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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 200057

MAILED

MAR 10 2009

OFFICE OF PETITIONS

In re Application of :
Mario Nemirovsky, et al. :
Application No. 09/602,279 : DECISION DISMISSING PETITION
Filed: June 23, 2000 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1778.3120000 (0168.00US) :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 9, 2009, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED AS MOOT**.

Unfortunately, the petition was not referred to the appropriate deciding official for decision until after the issuance of this application into a patent. However, petitioner's attention is directed to 37 CFR 1.313(d), which states:

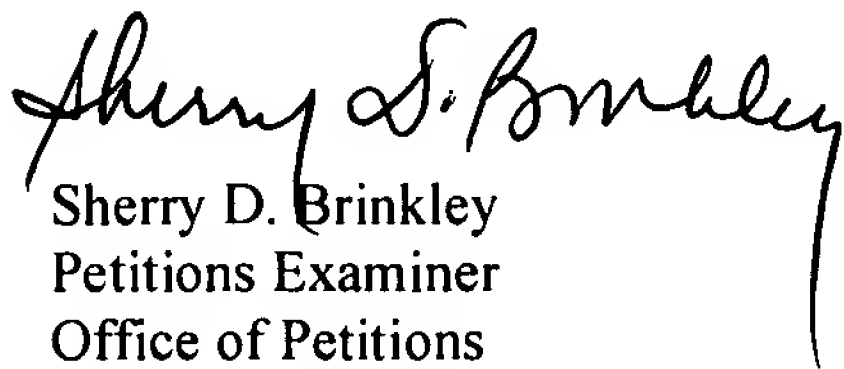
A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**. (Emphasis added)

In this case, the petition was not received in the Office of Petitions for consideration until March 9, 2009, the date upon which the above-identified application issued as U.S. Patent No. 7,502,876. Since the case has now issued, the petition to withdraw from issue cannot be granted.

The request for continued examination (RCE) filed concurrently with the petition is improper in view of the issuance of this application into a patent and will not be processed. Accordingly, the \$810 filing fee and the \$130 petition fee submitted are unnecessary and will be refunded in due course.

The Information Disclosure Statement has been made of record in the file of the above-identified application without further consideration. See 37 CFR 1.97(i).

Telephone inquiries should be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

NEMIROVSKY *et al.*

Appl. No. 09/602,279

Filed: June 23, 2000

For: **Background Memory Manager
That Determines If Data
Structures Fit in Memory With
Memory State Transactions Map**

Confirmation No. 9147

Art Unit: 2182

Examiner: Peyton, Tammara R.

Atty. Docket: 1778.3120000 (0168.00US)

**Petition to Withdraw From Issue Under 37 C.F.R. § 1.313(c)(2)
for Consideration of a Request for Continued Examination**

Mail Stop Issue Fee

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Madam:

It is hereby petitioned under 37 C.F.R. § 1.313(c)(2) that the above-captioned application be withdrawn from issue for consideration of the accompanying request for continued examination in compliance with 37 C.F.R. § 1.114.

It is believed that no extensions of time are necessary, other than those that are otherwise provided for herewith. However, if extensions of time under 37 C.F.R. § 1.136 other than those provided herewith are required to prevent abandonment of the above-captioned application, then such extensions of time are hereby requested.

Adjustment date: 03/12/2009 CKHLOK
03/10/2009 INTEFSW 00002516 09602279
01 FC:1464 -130.00 OP
02 FC:1801 -810.00 OP

Refund Ref:
03/12/2009 0030067626

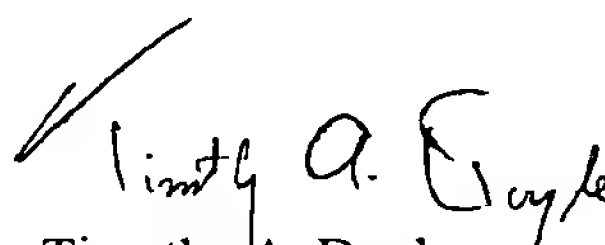
Credit Card Refund Total: \$940.00

Am Exp.: XXXXXXXXXXXX1005

This petition is accompanied by our Online Credit Card Payment Authorization in the amount of \$130.00 in payment of the required fee (37 C.F.R. § 1.17(h)). The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.


Timothy A. Doyle
Attorney for Applicants
Registration No. 51,262

Date 9 MAR 09

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

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Request for Continued Examination (RCE) Transmittal

Address to:
Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Application Number	09/602,279
Filing Date	June 23, 2000
First Named Inventor	Mario NEMIROVSKY
Art Unit	2182
Examiner Name	Peyton, Tammara R.
Attorney Docket Number	1778.3120000 (0168.00US)

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ii. ☐ Other _____
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- ii. ☐ Affidavit(s)/ Declaration(s)
- iii. ☒ Information Disclosure Statement (IDS)
- iv. ☒ Other Petition to Withdraw from Issue

2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
- b. ☐ Other _____

3. Fees

- The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.
- The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to Deposit Account No. 19-0036
- a. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17)
- iii. ☐ Other _____
- b. ☐ Check in the amount of \$ _____ enclosed
- c. ☒ Payment by credit card (~~For PTO-2038 only~~)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Signature	<i>Timothy A. Doyle</i>	Date	March 9, 2009
Name (Print/Type)	Timothy A. Doyle	Registration No.	51,262

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Signature	
Name (Print/Type)	
Date	

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND				
1 Date of Request: <u>3/10/09</u>		2 Serial/Patent # <u>09/602279</u>		
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
<input checked="" type="checkbox"/>	Filing <u>RCE</u>	<u>w/fee</u>	<u>3/9/09</u>	\$ <u>810</u>
<input type="checkbox"/>	Amendment			\$
<input type="checkbox"/>	Extension of Time			\$
<input type="checkbox"/>	Notice of Appeal/Appeal			\$
<input checked="" type="checkbox"/>	Petition	<u>w/fee</u>	<u>3/9/09</u>	\$ <u>130</u>
<input type="checkbox"/>	Issue			\$
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		7 TOTAL AMOUNT OF REFUND		\$ <u>940</u>
		8 TO BE REFUNDED BY: <u>Credit card</u>		
10 REASON:		<div style="border: 1px solid black; padding: 5px;"> Treasury Check Credit Deposit A/C #: 9 -- </div>		
<input type="checkbox"/>	Overpayment			
<input type="checkbox"/>	Duplicate Payment			
<input checked="" type="checkbox"/>	No Fee Due (Explanation):			
<u>Application issued.</u>				
11 REFUND REQUESTED BY:				
TYPED/PRINTED NAME: <u>Sherry D. Brinkley</u>		TITLE: <u>Petition Examiner</u>		
SIGNATURE: <u>[Signature]</u>		PHONE: <u>2-3204</u>		
OFFICE: <u>Petitions</u>				
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APPROVED: <u>[Signature]</u>		DATE: <u>3/12/09</u>		

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